

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

IN RE:
JERRY DEON BERRY

CASE NO: 11-70203-HDH-13
DATED: October 3, 2013
ATTORNEY: MONTE J WHITE
HEARING DATE: 11/20/2013
HEARING TIME: 10:00 AM

Trustee's Motion to Compel Debtor to File with the Court a copy of the Debtor's 2012 Federal Income Tax Return or in the Alternative to Provide a Copy to the Trustee and/or to Pay any Excess Tax Refund to the Trustee within Ten (10) days of the Entry of the Order Requested Herein

Comes now **Walter O'Cheskey, Standing Chapter 13 Trustee, Movant** herein, and pursuant to Section 1307(c) of the Bankruptcy Code and Bankruptcy Rule 9014 files this Trustee's Motion to Compel Debtor to File with the Court a copy of the Debtor's 2012 Federal Income Tax Return or in the Alternative to Provide a Copy to the Trustee and/or to Pay any Excess Tax Refund to the Trustee within Ten (10) days of the Entry of the Order Requested Herein ("Motion"), and for same would respectfully show the Court as follows:

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT US BANKRUPTCY COURT, CLERK'S OFFICE, 1100 COMMERCE 1254, DALLAS, TEXAS, 752420000 BEFORE CLOSE OF BUSINESS ON October 27, 2013, WHICH IS TWENTY-FOUR (24) DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE MUST BE IN WRITING AND FILED WITH THE CLERK, AND A COPY MUST BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING WILL BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY. IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

1. Debtor initiated the instant Chapter 13 proceeding by the filing of a voluntary petition on May 24, 2011.
2. Section 521(f) of the Bankruptcy Code provides, *inter alia*,: "At the request of the court, the United States Trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court - (1) at the same time filed with the taxing authority, a copy of each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter;"
3. Movant is the Trustee, and therefore, is a party in interest in this case.
4. Debtor is an individual.
5. On 1/23/2013 the Trustee mailed to Debtor by United States First Class Mail postage paid, at his/her home address shown on the Petition or any notice of change of address most recently received from the Debtor by the Trustee, a "2012 Tax Year Reminder Notice" ("the Request") which contained the following statement: **"The Trustee hereby requests a copy of your 2012 1040/1040A/1040EZ Federal Tax RETURN with all schedules attached** when the return is filed." The Trustee's email address, fax number, and mailing address were provided.
6. The Request also stated: "If you filed for an extension to file your return, send the Trustee a copy of the extension request which you filed. A signed copy of the extension request must be sent to the Trustee immediately upon filing."

8. The 2012 federal income tax return or request for extension was due to be filed with the IRS by April 17th, 2012.
9. Debtor has, as of the date of filing hereof, failed to provide the Trustee with a copy of his/her 2012 federal income tax return or transcript; request to IRS for an extension; or affidavit regarding non-filing and/or has failed to pay the excess refund above \$2,000.00 as provided in General Order 2010-01, if applicable.

Debtor(s) have not provided Trustee Tax Return or Refund (if applicable)

10. The Trustee would show that it is necessary in the fulfillment of the Trustee's duties under the Bankruptcy Code, that the Trustee receive and review Debtor's federal income tax return, inter alia, in order to determine the amount of any IRS Refund due to Debtor, and also to determine whether or not there has been a change in Debtor's financial circumstances such that a Trustee Modification to the Plan is appropriate. Further, that it is necessary that Debtor turn-over to the Trustee any "excess" IRS Refund in order that the Trustee may comply with the provisions of the Court's General Order that any such "excess" be paid by the Trustee pro-rata to Debtor's general unsecured creditors.

WHEREFORE, PREMISES CONSIDERED, Walter O'Cheskey, Standing Chapter 13 Trustee, Movant herein, prays that **UNLESS A COPY OF THE DEBTOR'S 2012 FEDERAL INCOME TAX RETURN, TRANSCRIPT, AFFIDAVIT, OR A REQUEST TO IRS FOR EXTENSION, IS FILED OR DELIVERED TO THE TRUSTEE AT LEAST FIVE (5) BUSINESS DAYS PRIOR TO THE ABOVE STATED PRE-HEARING CONFERENCE DATE AND THE DEBTOR PAYS THE EXCESS REFUND TO THE TRUSTEE (in which event there will be no pre-hearing conference or hearing, and this Motion will be withdrawn by the Trustee)**, this Court enter an Order **COMPELLING THE DEBTOR TO PROVIDE A COPY OF THE DEBTOR'S 2012 INCOME TAX RETURN AND/OR PAY THE DEBTOR'S EXCESS TAX REFUND ABOVE \$2,000.00 WITHIN TEN (10) DAYS OF THE ENTRY OF THE ORDER ("Order")**.

Respectfully submitted,

Dated: October 3, 2013

/s/ Walter O'Cheskey
Walter O'Cheskey, Chapter 13 Trustee
6308 Lola Ave., Suite 100,
Lubbock TX 79424

NOTICE OF HEARING

You are hereby notified of the filing of the foregoing Trustee's Motion. A pre-hearing conference on the Trustee's Motion will be held on **11/20/2013** at 8:30 AM by the Trustee at the same location. Any objection or response to the proposed Motion not resolved or defaulted at the Pre-Hearing Conference will be heard by the Court at the Hearing Date and Time above at the following location:

Live

US COURTHOUSE ROOM 222

10TH & LAMAR STREETS

WICHITA FALLS, TEXAS

Video

US COURTHOUSE ROOM 208

10TH & LAMAR STREETS

WICHITA FALLS, TEXAS

You do not have to attend the pre-hearing conference or hearing unless you oppose the Motion.

Certificate of Service

I hereby certify that a copy of the foregoing "Trustee's Motion to Compel Debtor to File with the Court a Copy of the Debtor's 2012 Federal Income Tax Return or in the Alternative to Provide a Copy to the Trustee and/or to Pay Any Excess Tax Refund to the Trustee within Ten (10) days of the Entry of the Order Requested herein" was served on the following parties at the addresses listed below by United States First Class Mail or via electronic mail.

Debtor1: JERRY DEON BERRY
4018 SOUTHEAST LESTER AVE

BARTLESVILLE, OK 74006

Debtor 2:

,

Debtor Attorney
MONTE J WHITE
ATTORNEY AT LAW
1106 BROOK AVE HAMILTON PLACE
WICHITA FALLS TX 76301-0000

Internal Revenue Service
PO Box 7346
Philadelphia, PA 1901-7346

Dated: October 3, 2013

/s/ Walter O'Cheskey
Walter O'Cheskey, Chapter 13 Trustee